

IN THE UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IN RE:	§	CHAPTER 11
	§	
TRINITY RIVER RESOURCES, LP	§	
	§	CASE NO. 16-10472-tmd
Debtor	§	

**BBX OPERATING, LLC'S MOTION TO COMPEL PAYMENT
OF CURE CLAIMS**

This pleading requests relief that may be adverse to your interests.

If no timely response is filed within 21 days from the date of service, the relief requested herein may be granted without a hearing being held.

A timely filed response is necessary for a hearing to be held.

TO THE HONORABLE TONY DAVIS, UNITED STATES BANKRUPTCY JUDGE:

BBX Operating, LLC ("BBX") files this Motion to Compel Payment of Cure Claims, as follows:

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1334. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2).
2. In connection with the sale of substantially all of the Debtor's asset, the Debtor original filed its Notice of Intent to Assume and Assign Certain Unexpired Leases and Executory Contracts and Setting Forth Cure Amounts (the "Contract List") on July 31, 2017 [Dkt. 357]. BBX (along with Kodiak Resources, Inc.) timely filed an Objection to certain of the proposed Cure Amounts, relating to certain contracts which were proposed to be assumed and assigned by the Debtor in connection with the sale of assets. *See* Dkt. 380. The Debtor subsequently

amended its Contract List on September 6, 2017 [Dkt.390], and filed a Corrected Amended List on the same day [Dkt. 392].

3. Ultimately, the Debtor decided to assume and assign certain Joint Operating Agreements to the Purchaser (East Chalk Holdings II, LLC), which was approved by this Court pursuant to the Court's Order dated September 20, 2017 [Dkt. 420].

4. The cure claim totals for the assigned Joint Operating Agreements owed to BBX totals \$202,641.69.¹

5. Instead of paying the cure claims (or promptly pay the cure claims) at the time of the assumption and assignment of the contracts, the parties agreed to attempt to resolve certain differences regarding the amounts owed, and BBX supplied all requested backup information. Except for approximately \$12,000 of the amount sought by BBX, the Debtor does not dispute the amounts due under the assumed contracts. Though BBX has demanded payment of the cure claim amount to BBX, the Debtor has refused to do so, stating that it is holding such funds due to a purported "set off" based upon the claims in the adversary proceeding styled *Trinity River Resources, LP v. BBX Operating, LLC et al*, Adversary No. 17-01090.

6. None of the allegations raised in the adversary proceeding relate to the contracts that were assumed and assigned. Moreover, assumption of the contracts "cleanses" the contracts from any claims for recovery of avoidable transfers. *See, e.g., Compton v. Mustang Engineering Ltd. (In re MPF Holdings U.S., LLC)*, 495 B.R. 303 (Bankr. S.D. Tex. 2013)(barring preference claims); *Official Comm. of Unsecured Creditors v. Aust (In re Network Access Solutions Corp.)*, 330 B.R. 67 (Bankr. D. Del. 2006)(barring fraudulent transfer claims); *Alberts v. Humana Health*

¹ There is a dispute over approximately \$12,000 of this amount with the Debtor, though BBX expects that this will be resolved.

Plan, Inc. (In re Greater Southeast Community Hospital Corp.), 327 B.R. 26 (Bankr. D.D.C. 2005)(barring preference claims).

7. The retention of these funds by the Debtor is unjustified, and effectively amounts to a pre-judgment attachment or garnishment of these funds without any basis. The Bankruptcy Code, and applicable case law, require that these funds be turned over and paid to BBX and BBX seeks an order compelling the Debtor to turn over such funds immediately. The desire to hold these funds based upon unadjudicated and uncertain claims is without any basis, and the funds should be paid.

WHEREFORE, based on the foregoing, BBX requests that the Court grant this motion, grant such other and further relief to which it may show itself to be justly entitled.

Respectfully submitted,

WALLER LANSDEN DORTCH & DAVIS, LLP

By: /s/ Mark C. Taylor

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ATTORNEYS FOR MOVANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing has been served upon those parties receiving the Court's ECF e-mail notification including counsel listed below, and on all parties listed on the attached list on December 15, 2017.

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/s/ Mark C. Taylor

Mark C. Taylor

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